

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

ROBERT AYRES DaSILVA, JR.,

Plaintiff,

vs.

CASCADE COUNTY DETENTION
CENTER, COMMANDER
O'FALLEN, BOB EDWARDS, C/Os
BENNETT, LIGHT, VANZOUT,
TIBBETTS, GAMON, and
WALTERS,

Defendants.

CV-17-00115-GF-BMM-JTJ

ORDER

Plaintiff Robert DaSilva filed a Motion to Amend/Compel, a Motion for Reconsideration, and a Motion to Clarify. United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on January 12, 2018. (Doc. 22) The Court granted DaSilva until March 2, 2018, to file any objections to Judge Johnston's Findings and Recommendations. (Doc. 36.) DaSilva filed an objection on March 6, 2018. (Doc. 48.) Though not timely, the Court will consider DaSilva's objection in light of his status as a prisoner proceeding in forma pauperis and without counsel. The Court reviews *de novo*

Findings and Recommendations to which a party timely objects. 28 U.S.C. § 636(b)(1). The Court reviews portions of Judge Johnston's Findings and Recommendations not specifically objected to for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

DaSilva's objects to Joshua Racki not being named as a Defendant in this matter. (Doc. 22 at 6.) DaSilva argues that Racki "is Cascade County's Chief Law Enforcement Officer and he should be added because he is employed by Cascade County, who has been commissioned with the power to act or make decisions of authority in judicial mandates as well as humanistic interests of the substandard condition of confinement." *Id.* at 7. Judge Johnston determined that DaSilva is a state prisoner and Racki's representations to the Bureau of Prisons and/or the United States Marshals fail to be relevant to this matter. (Doc. 22 at 4.) The Court agrees. The Court will deny DaSilva's motion to amend to add Racki as a Defendant.

DaSilva additionally objects to the motion for reconsideration regarding an Article II, Section 36 (2017) Montana's Constitution "Marsy's Law" Violation. DaSilva argues that the use of Marsy's Law should be a new violation. (Doc. 48 at 1.) DaSilva argues that the State proceeded in charging him despite the Montana Supreme Court's ruling that Marsy's Law violates the Montana Constitution. *Id.* at 2-3. DaSilva contends that the State's actions are in "bad faith and in a harassing

manner.” *Id.* Judge Johnston construed this as a motion for reconsideration to this Court’s decision to abstain from hearing DaSilva’s claims regarding his ongoing state court criminal prosecution pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). (Doc. 22 at 4.) Notwithstanding DaSilva’s failure to comply with Local Rule 7.3, his allegations do not plausibly suggest exceptional circumstances that would render *Younger* abstention inapplicable. DaSilva has not made a showing of bad faith, harassment, or other extraordinary circumstances. The Court agrees that DaSilva has the opportunity to litigate any federal constitutional challenge he may have in state court.

The Court has reviewed Judge Johnston’s Findings and Recommendations regarding the motion to amend and the motion for reconsideration *de novo*. The Court has reviewed the remaining portions of Judge Johnston’s Findings and Recommendations for clear error. The Court finds no error in Judge Johnston’s Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Johnston’s Findings and Recommendations (Doc. 22) are **ADOPTED IN FULL**.

IT IS ORDERED that DaSilva’s Motion to Add Joshua Ricki as a Defendant (Doc. 18) is **DENIED**.

IT IS ORDERED that DaSilva’s Motion for Reconsideration (Doc. 19) is **DENIED**.

IT IS FURTHER ORDERED that DaSilva's Motion to Clarify (Doc. 21) to the extent that it seeks to add Cascade County Detention Center as a Defendant is **DENIED**. Cascade County Detention Center will be terminated as a Defendant on the docket.

DATED this 5th day of April, 2018.

A handwritten signature in blue ink that reads "Brian Morris".

Brian Morris
United States District Court Judge